

REMARKS

Applicants note the withdrawal of the rejection of claims 22-24 under 35 USC §112, first paragraph in view of the amendments filed in the paper of July 31, 2008.

Claims 22-24 are currently pending.

Claims 22-24 have been amended to recite that the soy protein products are obtained from transgenic soybean seeds. Support for the term “transgenic” can be found throughout the specification, examples and claims as originally filed. Thus, it is believed that no new matter has been added.

Claims 22-24 remain rejected under 35 U.S.C.102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trueblood et al. (US Patent No. 4,267,118 (‘118 patent) issued on may 12, 1981) for the reasons stated in the Office Action on October 15, 2008, specifically, that the instantly claimed invention reads on soybean oil which inherently comprises oilbody proteins (e.g. oleosin, a soy protein) including other contaminants.

This position strains the bounds of credulity. One of ordinary skill in the art would understand that the term soy protein product inherently encompasses a certain amount of protein and that amount is well beyond 0.1%.

Submitted herewith is a copy of a portion of Soy Protein Products: Characteristics, Nutritional Aspects and Utilization published by the Soy Protein Council (1987). It is stated on page 1 of this reference that

Soy protein products fall into three major groups. These groups are based on protein content, and range from 40% to over 90%. All three basic soy protein product groups (except full-fat flours) are derived from defatted flakes. They are: soy flours and grits, soy protein concentrates and soy protein isolates (Table 1). . . .

Thus, the lowest level of soy protein in a soy protein product is about 40%.

Also, submitted here with is a printout from the soy foods web page, www.soyfoods.org. This also shows that a soy protein product such as soy flour would have at least 40% protein.

Accordingly, one is inexorably led to the conclusion that a soy protein product would have at least about 40% protein and that a food-grade quality oil having less than 0.1% protein does not constitute a soy protein product as that term is defined as set forth in the aforementioned publication by the Soy Protein Council.

In view of the foregoing amendments and discussion, withdrawal of rejection of claims 22-24 as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trueblood et al. (US Patent No. 4,267,118 ('118 patent) is respectfully requested.

Claims 22-24 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Staswick et al. (Archives of Biochemistry and Biophysics, 223;1-8, 1983).

Staswick et al. are concerned with improving the nutritional quality of soybean seed protein by altering glycinin subunit composition. The cultivar used in the study does not appear to be transgenic. The focus of Staswick et al. is in improving the nutritional quality of glycin storage protein by replacing subunits having a low methionine content with those having a higher methionine content.

In contrast, the instant invention concerns food comprising a soy protein product prepared from transgenic soybean seeds having a reduced quantity of soybean seed storage proteinwherein the quantity of one or more members of a class of soybean seed storage protein subunits is reduced when compared to soybean seeds not comprising the chimeric gene (emphasis added) of step (a), and wherein the class of soybean seed storage protein subunits is selected from the group consisting of glycinin and β -conglycinin.

It is stated on page 6 of the Office Action that “. . .it is noted that the features upon which applicant relies (i.e., soy protein products as claimed contains chimeric construct) are not recited in the rejected claim(s). . . .”

Applicant respectfully submit that such features are indeed recited by the claims.

Food of the instant invention comprises a soy protein product prepared from transgenic soybean seeds having a reduced quantity of soybean seed storage proteinwherein the quantity of one or more members of a class of soybean seed storage protein subunits is reduced when compared to soybean seeds not comprising the chimeric gene (emphasis added) of step (a), and wherein the class of soybean seed storage protein subunits is selected from the group consisting of: glycinin and β -conglycinin.

Accordingly, food of the instant invention comprising a soy protein product as recited in the claims would be distinguishable by the presence of the chimeric gene used to create the transgenic soybean plant producing the seeds from which the soy protein products were obtained.

Methods for detection of chimeric genes in biological and in food material a very well known in the art and performed on a routine basis by those skilled in the art.

In view of the foregoing discussion, withdrawal of the rejection of claims 22-24 under 35 USC §102(b) as anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Staswick et al. is respectfully requested.

In view of the foregoing, allowance of the above-referenced application is respectfully requested.

A notice of appeal accompanies this response.

Please charge any fees that may be required in connection with this response, to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,

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